

September 4, 2014

National Freedom of Information Act Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

RE: FOIA request EPA-HQ-2014-008306

Dear Ms. Jackson:

Thank you for handling this request. As per our email correspondence, I am formally writing to help clarify search terms and timeframes for FOIA request EPA-HQ-2014-008306 (included as an addendum to this letter).

My initial request has four parts. Below I address each part and suggest search terms and/or agree to constrain the scope and/or the timeframe to facilitate your response while at the same time maintaining the spirit of FOIA:

1. The first of my requests identifies Kris Nygaard, of ExxonMobil, and seeks all releasable records of correspondence between him and EPA officials specifically regarding prospective case studies, such as planned as part of the HF Study. Given Dr. Nygaard's role in coordinating technical roundtables and working groups on the topic of subsurface contaminant migration, and given his position in industry, it is reasonable to expect that this request will, as it is narrowly defined, reveal for public scrutiny important aspects of the undertaking of prospective studies with voluntary industry participation.

"Nygaard" should suffice as an initial search term. Further narrowing the search to isolate correspondence directly pertaining to the undertaking of prospective or life-cycle case studies likely requires more than simply filtering the initial results using "prospective" or "lifecycle" (alternatively, "life-cycle" and "life cycle") or "case stud". This is because individual records of correspondence may instead refer to a specific well name or identifier that would be the focus of a prospective study. The fact that a referenced well is the focus of a prospective study is likely implicit, not explicit, in much of the records of correspondence sought. Before seeing a subset of the releasable records, it is of course difficult to outline additional, more specific search terms, but I am hopeful that these suggested search terms are helpful to clarify my intended scope, with respect to content.

FOIA request EPA-HQ-2012-001259, which was closed on April 20, 2012, led to the release of "access agreement" drafts. If this is a phrase initiated and used by EPA

toward securing voluntary participation in prospective case studies, then it should be included as a search term to ensure that draft "access agreements" are included among the releasable records.

As for timeframe, September 1, 2012 to present was chosen in my initial request to capture, in particular, releasable records of correspondence pertaining to securing a replacement site, and replacement prospective study, given the failure to secure participation for the planned prospective study in DeSoto Parish, La. This failure to secure participation was disclosed in the HF Study Progress Report published in December 2012, and I expect that this report was more or less final and undergoing internal review in September 2012. Therefore, I am anticipating that the requested timeframe would encompass any discussion of a replacement case study involving Kris Nygaard. I do not agree to alter this timeframe.

2. The second part of my July 8, 2014 FOIA request pertains, specifically, to the planned DeSoto Parish, La. prospective study, and the failure to carry out this planned study. As such "DeSoto" and/or any of several specific well names or identifiers for well(s) considered as a potential focus of the planned prospective study should suffice as initial set of search terms. Again, "prospective" or "lifecycle" (alternatively, "life-cycle" and "life cycle") and "case stud" or other identified shorthand references to the general subject of prospective case studies may be useful as a secondary search term, but without seeing a subset of the records it is not possible to know whether such additional filtering would miss releasable records pertinent to the request. Again, the reason is that such terms, used to identify the topic of correspondence, would likely be implicit in pertinent records.

Regarding timeframe, the initial request of this part is September 1, 2010 to present. Given that the DeSoto County prospective study was abandoned in the Fall of 2012, I will agree to narrow this time to September 1, 2010 to December 31, 2012.

3. The third part of my July 8, 2014 FOIA request is identical to the second part, except that it is specific to Washington County, Pa. If this particular prospective study is indeed underway, I would like to narrow my request to only include draft access agreements and the final access agreement. I am not able to determine whether these releasable records are specifically referred to as an "access agreements", and thus recoverable under a search using that term. Therefore, to be clear, I would like the scope of this part of my request to only include the proposed and ultimately agreed to terms of the industry's voluntary participation in this specific case study.

Given this significant restriction, I believe that there should be no need to alter the timeframe for this the third of my four distinct FOIA requests.

4. The fourth part of my July 8, 2014 FOIA request seeks the disclosure of internal EPA communication re the replacement of the planned but canceled DeSoto Parish, La prospective case study. If there is a replacement study selected, then I agree to further restrict this part of my request to just the proposed and final agreements of

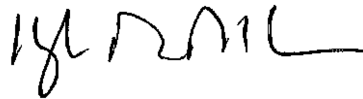
the terms of industry voluntary participation. If there is not yet a replacement study selected, then I agree to further restrict this the fourth part of my request to just communication that: i) involves Jeanne Briskin (based on information gleaned from FOIA request EPA-HQ-2012-001259); and ii) pertains to efforts to secure industry participation in a prospective study that was not included in the HF Study Plan.

Again, given this significant restriction, I believe that there should be no need to alter the timeframe for this particular request.

Thank you again for your attention to my initial response, and to the refinements of that response herein.

Please let me know if any of the four parts to my request, as significantly restricted above, cannot be responded to before the end of November 2014, and, in the event that is the case, please provide justification for the need to extend the deadline beyond that date for each part.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. R. MacMillan', with a long horizontal flourish extending to the right.

Hugh R. MacMillan

Addendum: Copy of initial FOIA request submitted July 8, 2014, assigned as EPA-HQ-2014-008306.

July 8, 2014

National Freedom of Information Act Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

[Also submitted via email at **hq.foia@epa.gov**]

Dear FOIA Officer:

This request is regarding the U.S. Environmental Protection Agency's efforts to secure participation with oil and gas industry companies so that the EPA might carry out prospective, or "lifecycle", studies of individual hydraulically fractured wells.

Such studies were envisioned in the Hydraulic Fracturing (HF) Study plan (EPA 600/R-11/122). The subsequent December 2012 progress report stated:

"The EPA continues to work with industry partners to identify locations and develop research activities for prospective case studies. As part of these case studies, the EPA intends to monitor local water quality for up to a year or more after hydraulic fracturing occurs. It is likely, therefore, that the prospective case studies will be completed after the report of results. In that event, results from any prospective case studies will be published in a follow-up report." (EPA 601/R-12/011 at p. 23)

Such studies are important to the public interest, as they will help to inform the need for and effectiveness of environmental and public health protections. However, since industry participation is voluntary, there is obvious risk of bias in the undertaking of the prospective studies.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, Food & Water Watch (F&WW) respectfully requests the below information:

1. Any and all records of correspondence between U.S. EPA officials and Kris Nygaard, dated from September 1, 2012 to present, pertaining to prospective, or lifecycle studies of wells hydraulically fractured for the purpose of extracting hydrocarbons, whether predominantly oil or natural gas;
2. Any and all records of correspondence between U.S. EPA officials and oil and gas industry representative(s), dated from September 1, 2010 to present, pertaining to the coordination with industry of, or conditions of industry participation in,

- prospective or lifecycle studies of wells hydraulically fractured for the purpose of extracting hydrocarbons in DeSoto Parish, LA;
3. Any and all records of correspondence between U.S. EPA officials and oil and gas industry representative(s), dated from September 1, 2010 to present, pertaining to the coordination with industry of, or conditions of industry participation in, prospective or lifecycle studies of wells hydraulically fractured for the purpose of extracting hydrocarbons in Washington County, PA; and
 4. Any and all records of correspondence between U.S. EPA officials, dated from September 1, 2010 to present, pertaining to the coordination with industry of, or to the conditions of industry participation in, a replacement prospective or lifecycle study, given failure to carry out the initially proposed DeSoto Parish, LA well site prospective study.

The release of these records of correspondence will help to ensure that undue industry influence is avoided in the undertaking of prospective studies intended to protect the public interest.

To the extent that the above four distinct requests encompass different volumes of documents, and therefore require different lengths of time to fulfill, we respectfully ask that they be fulfilled separately.

F&WW is a non-profit consumer advocacy organization, and requests a fee waiver on the following basis:

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor: The above request specifically identifies records of communications concerning the undertaking of the HF Study. As such, the request specifically concerns identifiable operations or activities of the government.
2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request: The requested communications will allow for public understanding of the role of oil and gas industry representatives in a specific but key aspect of the undertaking of the HF Study. Such public understanding will help to ensure undue industry influence is avoided.
3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough: F&WW staff has the ability to analyze the information requested and intends to disseminate its analysis broadly to provide for public understanding of the role of oil and gas industry representatives in a specific but key aspect of the undertaking of the HF Study. Again, such public understanding will help to ensure undue industry influence is avoided. F&WW will disseminate the results of its independent analysis through its established communication channels, including on-line content, fact sheets, issue briefs and reports, all of which are made freely available to the

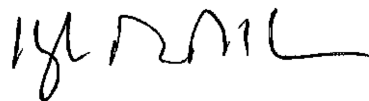
public. A number of courts have found that requesters' statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public is sufficient to entitle an organization to a fee waiver.¹

4. The disclosure must contribute "significantly" to public understanding of government operations or activities: The U.S. EPA faces a significant credibility challenge in its forthcoming release of the HF Study. Disclosure of the requested information would, presumably, ameliorate public concern about the potential for undue industry influence in the undertaking of the HF Study.
5. The extent to which disclosure will serve the requester's commercial interest, if any: Food & Water Watch has no commercial interest in obtaining the agency records that it is requesting.
6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest: There is no commercial interest, and the public interest is significant.

If this FOIA request is denied in whole or in part, a detailed justification for withholding the records is expected. Food & Water Watch also asks that any non-exempt segregable portions of the requested documents be disclosed.

Thank you for your prompt attention to this matter. Please contact Hugh MacMillan at 202-683-2455 or hmacmillan@fwwatch.org with any questions regarding this request for information.

Sincerely,



Hugh MacMillan
Senior Researcher
Food & Water Watch

¹See *S. Utah Wilderness Alliance v. U.S. BLM*, 402 F. Supp. 2d 82, 88 (D.D.C. 2005) (quoting *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) ("courts' findings that organizations' 'statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations . . . [are] sufficient to entitle [the] organization to a fee waiver.'")). See also *Judicial Watch, Inc., v. Rossotti*, 326 F.3d at 1314.